

**ORDER BELOW EXH. NO. 32 IN R.C.S. NO. 41/2015****(DATED 01/09/2022)****Sahaji Shamrao Patil Vs. Kakasaheb Shankarrao Patil etc.9****CNR – MHKO130001902015**

1. This is the amendment application submitted by defendant No. 1 under Order 6 Rule 17 of the Code of Civil Procedure (In short 'CPC') for making amendment in the written statement. It is submitted by the defendants that, the defendant by filing his written statement has denied all the pleadings made in the plaint. It is submitted by the defendant that, while drafting the written statement the defendant had given an information about the property bearing City Survey No. 1345 situated at Kolhapur to his advocate. However, the concerned advocate while drafting the written statement has not mentioned any reference about the said property in the written statement.

2. In fact, the property bearing City Survey No. 1345 is ancestral house property. The same is yet not partitioned between the plaintiff and the defendants. Apart from that, there are several other properties including agricultural properties, which are yet to be partitioned. The same are not included by the plaintiff in the “common-hotchpotch” while drafting the plaint. Thus, the suit is itself hit by the principle of non-inclusion of all the properties. This fact came to know to the knowledge of the defendant recently while discussing about the case with his newly appointed advocate.

3. The defendant has further submitted that, the proposed amendment will not change nature of the suit. The proposed

amendment is bonafied and will settle-down dispute between the parties finally. Resultantly, the defendant has prayed to allow this application.

4. The application is objected by the plaintiff by his say at Exh. No. 33. It is submitted that, the defendant has initially submitted his written statement on 30/04/2015, thereafter since the long span of 7 years, the defendant is making such kind of application. It is not tenable in the eyes of law. The plaintiff is seeking his share in the suit property on the basis of sale-deed bearing registration No. 7102010. The plaintiff is co-owner in the suit property.

5. It is further submitted by the plaintiff that, the instant suit is filed by the plaintiff in the capacity of co-owner. The proposed amendment will goes to change nature of the suit. No sufficient & cogent reason is provided in the application. The plaintiff has filed his affidavit of examination-in-chief in the year 2020. The defendant since then is trying to avoid cross-examination of the witness. The instant application is submitted only with motive to delay the suit. Hence, the plaintiff has prayed to reject the application.

6. Heard learned Advocate Shri. N.G. Shinde for the plaintiff, and Advocate Shri. S.S. Kestikar for the defendant.

7. In view of rival submissions from both sides, following points are arise for my determination and my findings with respect to each of the point is as under-

	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the proposed amendment is necessary for deciding real controversy between the parties ?	In the affirmative.
2.	What order & decree ?	As per final order..

REASONS.

As to point No. 1:-

8. Perusal of the record, it appears that, defendant No. 1 has initially submitted his written statement on 30/04/2015. Thereafter, predecessor of this Court has framed issues on 06/01/2020. Examination-in-chief on behalf of the plaintiff is submitted on 15/09/2021. These captioned dates definitely shows that, after filing of initial written statement in the year 2015 it tooks more than 7 years to the current defendant to move such kind of application.

9. The defendant has put-forth the ground of change of advocate before the Court. The ground raised by the defendant in the current application is pertaining to the non-inclusion of all the properties in “common-hotchpotch”. No doubt, this is the suit for partition, it is settled in the catena of judgments of the Hon’ble High Court & Supreme Court that, in a suit for partition all the ancestral properties should have to be included in “common-hotchpotch” while drafting the plaint. Thus, I think for deciding the suit for partition, all the ancestral properties should have to be included in the plaint.

10. As regards, with the contention and merits of this application, it is settled that, merits of the amendment application

are not to be considered while deciding the amendment application. No doubt, it appears that, delay of 7 years is caused for submitting this application. However, considering the pleading made in the application on affidavit, I am of the view that, the pleading pertaining to the non-inclusion of all properties is required to be inserted in the written statement for deciding real dispute between the parties pertaining to the partition. Thus, I answered point No. 1 in the affirmative.

As to point No. 2:-

11. As point No. 1 is answered in the affirmative, the application is liable to be allowed. It appears that, delay of 7 years is caused while preferring this application. Even though, the plaintiff has submitted his examination-in-chief in the year 2021 is same is not yet cross-examined by the defendant. The cross-examination is yet to begin. Therefore, for the delay caused on behalf of the defendant while submitting this application, certain costs needs to be imposed on him. Resultantly, in answer to point No. 2, I proceed to pass the following order:-

ORDER

1. The application (Exh. 32) is allowed subject to cost of Rs. 3000/- payable to the plaintiff within 7 days from today.
2. The defendant to carry out the sanctioned amendment in the written statement within the statutory period and to supply copies of amended written statement forthwith.

Kagal

Date:- 01/09/2022

(A.B. Jawale)

Jt. Civil Judge Junior Division, Kagal.